
a. **Background**

33. In the NPRM, we sought comment on whether we should permit toll free subscribers to hoard numbers. The NPRM defined "hoarding" as a toll free subscriber acquiring more numbers from a RespOrg than it intends to use immediately.¹³⁸ Hoarding causes toll free numbers to remain inactive and unavailable for subscribers who need working toll free numbers. In the NPRM, we noted that the Commission had received many complaints about hoarding.¹³⁹ We also sought comment on what penalty, if any, should be imposed if a subscriber hoards toll free numbers.¹⁴⁰

b. **Comments**

34. Hoarding. Several carriers state that monitoring customers is difficult and that they oppose rules prohibiting hoarding. These carriers contend that, if a subscriber pays its bill, the carrier has no right to question that subscriber's intent to use a toll free number. These carriers also argue that they should not be penalized for subscribers' wrongdoings.¹⁴¹ Ameritech asserts that the proposed definition of hoarding is too broad and vague.¹⁴² NIMA maintains that direct-response marketers rely on telemarketing service bureaus to have a large supply of available toll free numbers to respond quickly to the marketers' need for the numbers. NIMA states that service bureaus need to maintain an inventory of spare numbers to smooth short-run imbalances between demand for new numbers and the supply of old numbers available for reassignment. What appears to be "warehousing" or "hoarding," NIMA states, could be a bona fide attempt to meet the legitimate needs of toll free subscribers.¹⁴³

35. Conversely, several commenters support rules prohibiting hoarding. Ameritech states that it would not oppose a rule addressing hoarding concerns by prohibiting reservation or acquisition of numbers for the purpose of selling those numbers or by requiring retention

¹³⁸ NPRM at 13701 n.72.

¹³⁹ Id.

¹⁴⁰ Id. at 13701.

¹⁴¹ See, e.g., MCI Comments at 9-10; AT&T Comments at 21 n.39.

¹⁴² Ameritech Comments at 28.

¹⁴³ See NIMA Comments at 6.

of a number failing to generate a minimum level of billable usage within 12 months.¹⁴⁴ SWBT warns that the actions NIMA argues may be bona fide business transactions could lead to pervasive hoarding or warehousing by RespOrgs.¹⁴⁵ SWBT asserts that paging companies take thousands of numbers with no specific customers assigned to them, and should be required to have bona fide customers before reserving a number.¹⁴⁶ Otherwise, RespOrgs have an incentive to set up "paging companies" of their own to act as a holding point for numbers.¹⁴⁷

36. Brokering. Subscribers of toll free services, such as the members of the 800 Users Coalition, express concern over number brokering.¹⁴⁸ ACRA, defining brokering as certain entities obtaining the rights to toll free numbers and attempting to "sell" those numbers for a substantial fee, maintains that brokering often involves toll free numbers with a mnemonic that would be valuable to a specific company targeted by number brokers.¹⁴⁹ Avis recommends that RespOrgs and third party agents deposit money into escrow accounts, whose costs they not be allowed to pass on to subscribers, and the escrow deposit would be forfeited if an entity engaged in the trafficking of toll free numbers. Avis further recommends that subscribers with a minimum amount of usage should be exempt from the escrow requirement and that a neutral body (e.g., the FCC or NANPA) investigate and prosecute instances of toll free number trafficking.¹⁵⁰ Conversely, ATC states that a subscriber should not be fined or lose a reserved number when it assigns the number for a fee to another company, as long as the number of assignments for a fee is insignificant compared to the subscriber's business operation.¹⁵¹ One commenter adds that if the resale of 800 numbers was permissible, a "highly fluid secondary market" would emerge and the present shortage of 800 numbers

¹⁴⁴ Id. at 28-29. Ameritech, however, does not support declaring hoarding "unlawful."

¹⁴⁵ SWBT Comments at 7-8.

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ See 800 Users Coalition Comments at 19; LDDS Reply Comments at 6-7 (the Commission should prohibit brokering as a violation of the Communications Act).

¹⁴⁹ ACRA Comments at 9.

¹⁵⁰ Avis Comments at 5-6.

¹⁵¹ See ATC Comments at 2.

would not exist.¹⁵²

37. Allnet states that the Commission should set an "economically efficient" price for toll free number reservations to assure that numbers are used efficiently. Allnet's proposal requires that if a toll free number fails to reach a preset monthly usage level within a specified time, the RespOrg would pay a higher monthly charge. Once the minutes of use exceed the preset monthly usage level, the fee would be reduced.¹⁵³ Allnet argues that a higher fee for low volume 800 numbers is a more direct deterrent against brokering than is an escrow requirement.¹⁵⁴

c. Discussion

38. Hoarding occurs when a toll free subscriber acquires more numbers from a RespOrg than it intends to use for the provision of toll free service. If a subscriber refuses to release numbers that are not in use, the pool of available numbers decreases. This will exacerbate toll free number depletion and necessitate the opening of an additional toll free relief code earlier than would be necessary otherwise. It is time consuming and costly for the industry to perform the necessary modifications to the network so that it can support calls using the new code. Hoarding can also result in some customers being unable to obtain toll free numbers, even though certain numbers are not being used. We conclude, therefore, that hoarding is contrary to the public interest. We further find that number brokering, which is the selling of numbers by private entities for a fee, is not in the public interest. Brokering provides motivation for hoarding and therefore results in quicker exhaustion of the current SAC and interferes with the orderly allocation of numbering resources.¹⁵⁵ Simply prohibiting a subscriber from hoarding a number will not fully eliminate the effects of hoarding. For example, a subscriber could acquire a group of numbers it expected to sell at a later date. The subscriber could then nominally place the numbers in service through "dummy" affiliates or other entities that otherwise would not employ a toll free number.

39. We disagree with arguments that the Commission has no right to question the

¹⁵² See Mark Olson Comments at 2.

¹⁵³ Allnet Comments at 3-4. See also Bass Tickets Comments at 2; Nissan Rosenthal Comments at 1.

¹⁵⁴ See *infra* paras. 56-59 for a discussion of the escrow requirement.

¹⁵⁵ For example, if the cost of having a toll free number in service is less than the expected revenue from the sale of the number, then the subscriber has an incentive to hoard numbers. Removing the ability to sell a toll free number eliminates this incentive to hoard.

use of toll free numbers if subscribers are paying their bills. Such a conclusion disregards the Commission's responsibility to promote the orderly allocation of toll free numbers and, again, would lead to the premature depletion of the supply of toll free numbers, which are a scarce public resource. To make all RespOrgs aware of our conclusions on this subject, we direct that the following language be included in the SMS tariff and in the LECs' toll free database access tariffs:

(1) [T]he Federal Communications Commission ("FCC") has concluded that hoarding, defined as the acquisition of more toll free numbers than one intends to use for the provision of toll free service, as well as the sale of a toll free number by a private entity for a fee, is contrary to the public interest in the conservation of the scarce toll free number resource and contrary to the FCC's responsibility to promote the orderly use and allocation of toll free numbers.

40. We conclude that imposing a one-time or monthly fee, as suggested by several commenters, would not sufficiently deter the hoarding of toll free numbers because some subscribers have the means to and will pay high fees if it is profitable to hoard and sell the numbers. A one-time fee, therefore, would not necessarily result in the orderly allocation of numbering resources, but could, as with number brokering, lead to premature exhaustion of the toll free SAC because, if the fee is below the market price of toll free numbers, parties with financial means may view the fee as approval of hoarding and thus may make substantial investments in toll free numbers which they believe they can sell out of inventory at a substantial profit. As a result, such a policy may hasten rather than slow number exhaustion. There is no way to determine if a subscriber is maintaining an inventory because it may soon have a need for the numbers, or if the subscriber is building a supply of numbers for possible sale, but in either scenario the numbers are unavailable for toll free subscribers that have an immediate need. We conclude that, to the extent that telemarketing service bureaus are performing legitimate services, and not merely buying and selling numbers, such activity would not be considered "hoarding," but that routing multiple toll free numbers to a single subscriber will create a rebuttable presumption of hoarding or brokering. Other factors that may be considered if a toll free subscriber is alleged to be hoarding or brokering numbers are the amount of calling of a particular number and the rate at which a particular subscriber changes toll free numbers.

d. Penalties for Hoarding and Brokering

(1) Comments

41. Avis contends that sanctions for hoarding should include fines, suspension of Commission and/or state authorizations for common carriers, and criminal referrals, if appropriate.¹⁵⁶ The 800 Users Coalition proposes that those who report instances of number brokering obtain the number being brokered. This "whistle-blower" proposal allegedly will provide subscribers with an incentive to report number brokering and will ensure that toll free numbers are available for their most efficient use.¹⁵⁷

(2) Discussion

42. Toll free subscribers that hoard or broker numbers will be subject to penalties¹⁵⁸ similar to those we will impose for warehousing.¹⁵⁹ The penalties may include, but are not limited to, a forfeiture penalty under § 503(b) of the Communications Act.¹⁶⁰ If a subscriber hoards numbers, that subscriber's service provider must terminate toll free service because hoarding is contrary to the public interest, leads to depletion of toll free numbers and number brokering, and is contrary to the rules adopted in this Second Report and Order.

5. Lag Time Rules

a. Background

43. In the NPRM, we noted that, under the Industry Guidelines, toll free numbers are categorized according to status and may remain in different statuses for varying amounts of time.¹⁶¹ We tentatively concluded that the time permitted to elapse between withdrawal of a number from the SMS database and conversion of the number to working status leads to an inefficient use of toll free numbers.¹⁶² The NPRM sought comment on two proposals to reduce the interval between reservation and conversion to working status: (1) reduce the time

¹⁵⁶ See Avis Comments at 2-5; see also Enterprise Rent-A-Car Comments at 5.

¹⁵⁷ See 800 Users Coalition Comments at 6.

¹⁵⁸ See 47 U.S.C. §§ 4(i), 501, 502, and 503.

¹⁵⁹ See supra para. 29.

¹⁶⁰ See 47 U.S.C. §251(e)(1) and § 503(b).

¹⁶¹ NPRM at 13697.

¹⁶² Id.

a toll free number may remain in reserved status from 60 days to 45 or 30 days;¹⁶³ and (2) reduce the time a toll free number can be in the assigned, but not working, status from 12 months to 4 months.¹⁶⁴

44. The NPRM also sought comment on the "aging" process, the time between disconnection or cancellation of a toll free number and the point when it may be reassigned to another subscriber.¹⁶⁵ While noting the need to prevent excessive misdialing, unreasonable expense to the new subscriber and confusion for the caller, the Commission stated its belief that reducing the aging process would better balance the needs of toll free subscribers and callers with the need to recycle toll free numbers expediently, and would enhance efficient allocation of this resource.¹⁶⁶ The NPRM sought comment on two proposals to reduce the aging process: (1) reduce the aging period between disconnect and spare status from 6 months to 4 months; and (2) reduce the period a number may remain in suspended status from 12 months to 4 months.¹⁶⁷

b. General Issues

(1) Comments

45. Several commenters maintain that reduced lag times were appropriate under the 800 conservation plan, but should not be part of ordinary toll free procedures.¹⁶⁸ Pacific does not believe that lengthy lag times caused the 800 shortage, but rather numbers moving directly

¹⁶³ Reserve status begins when a RespOrg takes a toll free number from the database for its customer. Under industry guidelines, a toll free number may be held in reserve status for up to 60 days. See Industry Guidelines at § 2.4.3. As part of the 800 conservation plan, the time a RespOrg can hold a number in reserve was reduced to 45 days.

¹⁶⁴ Id.

¹⁶⁵ Id. at 13697-98. Industry guidelines set the aging process at six months, with a provision that the period may be reduced to four months once the toll free resource is 95 percent exhausted. See Industry Guidelines at § 2.2.6. As part of the 800 conservation plan, the aging process was reduced to four months. See Wallman Letter II.

¹⁶⁶ Id.

¹⁶⁷ Id.

¹⁶⁸ See, e.g., NIMA Comments at 4; U S West Comments at 7; MFS Reply Comments at 3; LCI Comments at 5.

from reserved to working status, bypassing the assigned status.¹⁶⁹ Some PCIA members state that market demand, rather than artificially imposed time intervals, should determine number reassignment periods.¹⁷⁰ CWI asserts that the Industry Guidelines do not reflect the present-day value of toll free numbers and should be revised to accommodate RespOrgs' and subscribers' needs.¹⁷¹ Asserting that RespOrgs can evade any lag time limits, SWBT recommends that the Commission implement the following requirements in lieu of adjusting lag times: (1) a number may be reserved only if actual subscriber negotiations are underway; (2) a number cannot be moved into working status unless a "sale" to a subscriber intending to use that number has been completed; and (3) disconnected numbers must be returned to the spare pool.¹⁷² Several commenters assert that any lag time rules should be incorporated in the Industry Guidelines rather than in the Commission's rules, because such technical and operational procedures have historically been left to industry bodies.¹⁷³

(2) Discussion

46. We conclude that the extended periods for which toll free numbers remain out of service are unnecessary and inefficient. We further conclude that inordinately long lags between the withdrawal of a number from the SMS database and the conversion of that number to working status exacerbated the 800 number shortage. Reducing the time that toll free numbers may remain out of circulation, and the rules we are adopting today in this Second Report and Order, will lead to more efficient use and allocation of toll free numbers. We conclude that adopting these rules also will lead to more effective enforcement because compliance with the Industry Guidelines is voluntary, while RespOrgs and subscribers who disregard our rules will be subject to penalties. Our recent experience with 800 numbers illustrates the need for Commission involvement in modifying the lag time intervals in effect, although we prefer to leave operational procedures to industry forums where possible.¹⁷⁴

c. Reducing the Reserved and Assigned Intervals

¹⁶⁹ Pacific Comments at 4.

¹⁷⁰ PCIA Comments at 15 n.29.

¹⁷¹ CWI Comments at 2.

¹⁷² SWBT Comments at 5-7.

¹⁷³ See, e.g., AT&T Comments at 8-9; SNAC Comments at 12.

¹⁷⁴ See Appendix C for rules changes.

(1) Comments

47. Several commenters generally support a reduction in the amount of time a toll free number may remain in reserved status to 30 days, primarily to prevent warehousing of toll free numbers.¹⁷⁵ Numerous other commenters support a reduction to 45 days.¹⁷⁶ Many commenters, however, oppose any reduction in the reserved interval,¹⁷⁷ stating that 60 days is needed to move a number to working status. According to these parties, factors that can lead to the need for more time include marketing plans,¹⁷⁸ dedication of toll free circuits,¹⁷⁹ LEC provisioning delays,¹⁸⁰ construction delays,¹⁸¹ staffing needs for particular business applications,¹⁸² and the bundling of multiple services into one order.¹⁸³ MFS states that reducing the interval to 45 or 30 days could result in subscribers' losing their reserved numbers because of technical or regulatory variables that can delay installation of service. MFS maintains that a reduced reserved interval may impact small service providers more than large ones, because the larger service providers will have greater resources to adjust to a tighter time frame.¹⁸⁴

¹⁷⁵ See Promoline Comments at 2-4; ACTA Comments at 10, 13; Bass Tickets Comments at 2; NEXTLINK Comments at 3. Several commenters also support reducing the interval to 30 days, but give no specific reasons. See ACRA Comments at 10; Telecompute Comments at 2; UniTel Comments at 1.

¹⁷⁶ See, e.g., BellSouth Comments at 6; Crestar Comments at 2; AirTouch Paging Comments at 17 n.37; PCIA Reply Comments at 17-19; AT&T Comments at 7, 9 (45 days has been required under the Bureau interim 800 allocation plan and this interval has not created any operational problems for AT&T). See also LDDS Comments at 4; TRA Comments at 6-7 (supporting an initial reduction to 45 days and a further reduction to 30 days, if a 45-day interval leads to an increase in the quantity of toll free numbers without any offsetting implementation problems); NTS Comments at 1 (supporting a 45-day interval with a one-time re-reservation).

¹⁷⁷ See, e.g., CWI Comments at 2; MCI Comments at 4; Scherers Comments at 8.

¹⁷⁸ See, e.g., Sprint Comments at 5-6 n.3.

¹⁷⁹ See, e.g., LCI Comments at 5-6.

¹⁸⁰ Id.

¹⁸¹ Ameritech Comments at 10-11.

¹⁸² See, e.g., Sprint Comments at 5-6.

¹⁸³ U S West Comments at 8.

¹⁸⁴ MFS Comments at 4-5.

48. Numerous commenters support reducing the time a toll free number may remain in the assigned, but not working, status from 12 months to four months.¹⁸⁵ Unitel supports a reduction to four months, provided there is an opportunity to seek a reasonable extension if unusual circumstances arise.¹⁸⁶ Other commenters, however, oppose any reduction in the assigned interval. SNAC, for example, asserts that the 12-month time frame addresses the needs of subscribers whose numbers are embedded in their business plans yet are not required for usage until some later date (e.g., the number dedicated to the 1996 Olympics).¹⁸⁷ Assigning numbers well in advance of their actual usage also gives subscribers additional time beyond the reservation period to develop marketing plans,¹⁸⁸ build facilities,¹⁸⁹ and resolve possible construction delays or other problems with their telecommunications systems.¹⁹⁰ SNAC contends that reducing the assigned interval would not yield a large return of numbers to the SMS database because, prior to the 800 conservation plan, less than one-tenth of one percent of working 800 numbers were in assigned status.¹⁹¹ Some commenters contend that any reduction in lag times should be addressed by the industry rather than the Commission.¹⁹² Several commenters support a compromise approach, suggesting that the assigned interval be reduced to 9 months,¹⁹³ 6 months,¹⁹⁴ 60 days,¹⁹⁵ or 30 days.¹⁹⁶

¹⁸⁵ See, e.g., BellSouth Comments at 6; Time Warner Comments at 3; Telecompute Comments at 2.

¹⁸⁶ UniTel Comments at 1-2. Unusual circumstances include equipment delays, facilities shortages, and the inability of carriers to provide service. *Id.*; see also AT&T Comments at 9 (supporting reduction because, except in rare situations, subscribers are ready to convert numbers to working status within four months).

¹⁸⁷ SNAC Comments at 9-10; see also Scherers Comments at 8; NYNEX Comments at 2.

¹⁸⁸ SNAC Comments at 9-10; Ameritech Comments at 10-12.

¹⁸⁹ Bell Atlantic Comments at 3.

¹⁹⁰ Ameritech Comments at 10-12.

¹⁹¹ SNAC Comments at 9-10 n.16.

¹⁹² Ameritech Comments at 10-12.

¹⁹³ Sprint Comments at 6; see also Service Merchandise Comments at 4 (supporting reduction to 6 to 9 months).

¹⁹⁴ See, e.g., PCIA Comments at 15-16; Bell Atlantic Comments at 3.

(2) Discussion

49. The current 60-day reservation period and the current 12-month assigned period yield a maximum 14-month interval between a number's removal from the SMS database and the time that number may accept calls. We conclude that it is in the public interest to have toll free numbers available for those subscribers ready to put those numbers into service. Moreover, while the industry operated under the 800 conservation plans, little, if any, harm arose from shortening the intervals set in the Industry Guidelines. For these reasons, we reject the arguments opposing a reduction in the lag time between reservation and working status.¹⁹⁷

50. We conclude that a reduction of the reservation period from 60 days to 45 days is appropriate: the 800 conservation plan demonstrated that a 15-day reduction in the reservation interval will not impose a significant hardship upon new toll free subscribers. We further conclude that there shall be no extension of the reservation period after expiration of the initial interval. This policy will prevent RespOrgs from keeping numbers in reserved status indefinitely and from holding the most desirable toll free numbers, and will give other potential subscribers access to those numbers.

51. We also conclude that the interval in which a number may be assigned, but not working, shall be reduced from 12 months to 6 months. When combined with the 45-day reservation period, the total interval between a number's removal from the SMS database and its activation will be reduced from 14 months to 7 1/2 months, which should lead to more efficient use and orderly allocation of toll free numbers. In most cases, a six-month assignment interval will accommodate new toll free subscribers' business plans because the risk of misdialed calls will be minimal. A maximum six-month assignment period, combined with the 45-day reservation period and the time period for which the number "aged" after termination of its prior subscriber's service, should be a sufficient time period to protect the new toll free subscriber from misdialed calls once the subscriber is ready to activate the number. However, we acknowledge contentions that special circumstances may require

¹⁹⁵ Promoline Comments at 2-4 (supporting 60-day assigned interval combined with 30- day reservation interval).

¹⁹⁶ ACTA Comments at 11 (supporting 30 day assigned interval with the option to renew for an additional 30-day period for "good cause").

¹⁹⁷ See AT&T Comments at 7, 9; BellSouth Comments at 6. (AT&T and BellSouth noted that a 45 day reservation period has been in effect under the 800 conservation plan, and that interval has not caused an undue hardship upon RespOrgs.)

dedication of a toll free number more than 7 1/2 months before its actual usage, as in the case of the number dedicated to the 1996 Olympics¹⁹⁸ or numbers used for other one-time events such as political campaigns or charity functions. Such numbers belong in the "unavailable" status,¹⁹⁹ and not the assigned status. Numbers that will be used for an ongoing purpose, such as a business, should not be placed in unavailable status. We require RespOrgs requesting unavailable status to submit written requests to DSMI. This requirement will hold those parties more accountable and will decrease abuses of the current lag time process.²⁰⁰ If DSMI is uncertain whether a number should be placed in unavailable status, we expect it to seek guidance from the Common Carrier Bureau.

d. Reducing the Aging Process

(1) Comments

52. A few commenters support reducing the interval between disconnect and spare status.²⁰¹ AT&T states that it did not experience complaints regarding excessive misdialing, unreasonable expense to new toll free subscribers, or confusion for toll free callers during the four-month interval effective during the 800 conservation period.²⁰² BellSouth and U S West, however, assert that the temporary four-month interval led to misdirected calls, customer dissatisfaction, and excessive requests for new number assignments.²⁰³ Other commenters oppose a reduction to four months because of the potential inconvenience and expense an insufficient aging interval can impose on the previous toll free subscriber, the new

¹⁹⁸ See SNAC Comments at 9-10; Scherers Comments at 8; NYNEX Comments at 2.

¹⁹⁹ See Industry Guidelines at § 2.4.9 ("[t]he 800 Number is not available for assignment due to an unusual condition. Requests to make a specific 800 number unavailable must be submitted in writing to the NASC with the appropriate documentation of the reason for the request. The NASC is the only entity that can assign or remove this status to [sic] a number").

²⁰⁰ See Appendix C for rules changes.

²⁰¹ See, e.g., AT&T Comments at 10 (supporting reduction to four months); PCIA Reply Comments at 17-19 (same); Bass Tickets Comments at 2 (supporting a reduction to at least 4 months, perhaps to 2 months, because market forces should protect toll free subscribers); ACTA Comments at 11 (supporting reduction to 30 days as a way to deter warehousing).

²⁰² AT&T Comments at 10.

²⁰³ See BellSouth Comments at 6-7; U S West Comments at 7-8.

subscriber, and the calling public.²⁰⁴ Pacific states that a shorter aging period may prompt increased warehousing, as RespOrgs attempt to ensure a supply of properly aged numbers.²⁰⁵ Several commenters support increasing the time between disconnection of a number and placement of the number in spare status from the current six months to 12 months.²⁰⁶

53. In addition, a few commenters support reducing the current 12-month suspended interval.²⁰⁷ The majority of commenters oppose a reduction because of adverse impacts on seasonal subscribers that do not need a toll free number year-round.²⁰⁸ MCI contends that suspended service is often due to nonpayment or billing disputes, which often take longer than four months to resolve.²⁰⁹ In addition, U S West asserts that a reduction in the suspended interval will not yield significant savings in toll free numbers since only a small fraction of all toll free numbers are in suspended status, and seasonal subscribers hold most of those numbers.²¹⁰ U S West supports an appropriate pricing structure and the ability to tag seasonal numbers uniquely for potential subscribers.²¹¹ AT&T suggests limiting the quantity of numbers a RespOrg may hold in suspended status to reduce the likelihood that RespOrgs will keep numbers in that status for inappropriate reasons.²¹²

(2) Discussion

²⁰⁴ See, e.g., Ameritech Comments at 11-12; SNAC Comments at 10-11; MCI Comments at 5.

²⁰⁵ Pacific Comments at 4-5.

²⁰⁶ See, e.g., Pacific Comments at 4-5 (supporting a six-month interval if there is no referral number on the toll free number and an increase to 12 months if there is a referral number); BellSouth Comments at 6-7 (supporting six months with the option to extend to a maximum of 12 months if the previous subscriber has requested call referral); AirTouch Comments at 16-17 (supporting an increase to 12 months).

²⁰⁷ See, e.g., Crestar Comments at 2 (supporting reduction to four months); ACTA Comments at 11 (supporting reduction to 30 days); PCIA Comments at 15-16 (supporting reduction to 6 months).

²⁰⁸ See, e.g., SNAC Comments at 11; NIMA Comments at 4; LDDS WorldCom Comments at 5.

²⁰⁹ MCI Comments at 5-6. Most of those numbers are either reactivated or returned to spare in less than 12 months. Id.

²¹⁰ U S West Comments at 8-9; see also SNAC Comments at 11.

²¹¹ U S West Comments at 8-9.

²¹² AT&T Comments at 10-11.

54. We conclude that changing certain elements of the aging process will result in more efficient use of toll free numbers. First, we conclude that reducing the current six-month disconnect interval to four months will not significantly inconvenience callers, subscribers, or RespOrgs. A reasonable interval between disconnection of one subscriber's service and assignment of the number to a new subscriber is necessary, and a four-month disconnect interval was effective during the 800 conservation plan. The experience of AT&T, one of the largest RespOrgs, indicates that a permanent reduction to that level will not cause the inconvenience some commenters predict. In fact, the reduction will reduce the quantity of numbers not in working status but still unavailable for assignment. Because of the anti-warehousing measures adopted today,²¹³ we disagree with Pacific's contention that reducing the disconnect interval may result in increased warehousing of toll free numbers.²¹⁴ We also conclude that a RespOrg may not retrieve a number from disconnect status and return it directly to working status when the four-month disconnect interval expires. Upon expiration, all numbers in disconnect status must go into the spare category. This should ensure that numbers are placed in the disconnect category only when 800 service has been disconnected.

55. Second, we conclude that the 12-month suspended interval should be reduced to eight months, and that only numbers involved in billing disputes shall be eligible for such status. The record indicates that the majority of numbers currently in suspended status are assigned to seasonal subscribers.²¹⁵ While the quantity of numbers in suspended status is relatively small,²¹⁶ efficient allocation requires that numbers either be used by their subscribers or available for use by other potential subscribers. Seasonal numbers, therefore, may no longer be placed in suspended status. This should prevent RespOrgs from using the suspended and other non-working statuses to keep toll free numbers in their control and unavailable for reservation by the general public.²¹⁷

6. Escrow Requirement

a. Background

²¹³ See supra paras. 22 and 25.

²¹⁴ See Pacific Comments at 4-5.

²¹⁵ See, e.g., Ameritech Comments at 11-12; SNAC Comments at 10-11; MCI Comments at 5.

²¹⁶ See U S West Comments at 8-9; SNAC Comments at 11.

²¹⁷ See Appendix C for rules changes.

56. RespOrgs currently pay a monthly charge of 70 cents for each toll free number drawn from the SMS database. Similarly, a subscriber pays a service charge to the toll free service provider for each toll free number assigned to that subscriber. In the NPRM, we sought comment on the feasibility of requiring a one-time deposit into an escrow account for each toll free number held in reserved status. Commenters were asked to address the effect of such a requirement on market participants' incentives to warehouse or hoard toll free numbers. We asked, if deposits were required, who should make the deposit, how large the deposit should be to encourage efficient use of numbers, and generally how an escrow account requirement should work. We also sought comment on the effect a deposit requirement would have on smaller RespOrgs, and whether RespOrgs should pass this charge on to the toll free subscriber.²¹⁸

b. Comments

57. Most commenters oppose the requirement of a deposit into an escrow account for every toll free number reserved, arguing that the requirement would unnecessarily burden the industry.²¹⁹ Again, Allnet states that the Commission should seek a means of setting an "economically efficient" price for reserving 800/888 numbers, and that a deposit requirement is not the most efficient means of sending this price signal. Allnet argues that deposits are inefficient because the "cost of a deposit" is only the time value of money. Thus, Allnet states, the deposit has to be high enough so that the time value of losing the use of that money is equal to the economic price of holding the number.²²⁰ Similarly, Sprint argues that, if the deposit required is too low, it will not discourage effectively the unnecessary reservation of toll free numbers, but if the deposit is too high, it could financially burden RespOrgs and discourage customers from subscribing to toll free service.²²¹

58. Some commenters support the proposal but argue that the requirement should

²¹⁸ NPRM at 13696-97.

²¹⁹ See, e.g., MCI Comments at 2; Sprint Comments at 4-5; 800 Users Coalition Comments at 4; U S West Comments at 4; LDDS Comments at 5 (an escrow deposit requirement would harm smaller RespOrgs); MCI Reply Comments at 2-3 (vigorous enforcement of rules for abusers is more effective in preventing warehousing or hoarding of numbers); MFS Reply Comments at 2-3.

²²⁰ Allnet Comments at 3.

²²¹ Sprint Comments at 4.

not apply to small RespOrgs.²²² Avis recommends that RespOrgs, service providers, and third-party agents be required to make escrow deposits, and not be allowed to pass these costs to subscribers. Avis states that an entity should forfeit its escrow deposit if that entity traffics in toll free numbers, while subscribers who have exhibited a minimum amount of usage should be exempted from the escrow requirement.²²³

c. Discussion

59. We decline to impose an escrow deposit requirement. Such a requirement may reduce the incentive of RespOrgs, service providers, or subscribers to warehouse numbers, but we are persuaded that the same outcome can be achieved through other measures, such as the certification requirement adopted above.²²⁴ We also conclude that our finding that warehousing is an unreasonable practice under the Communications Act and is subject to Commission sanctions will discourage warehousing. Further, the costs associated with managing escrow deposits for the millions of available toll free numbers appear to be burdensome. We will reconsider our decision on an escrow deposit requirement if the protections we institute in this Second Report and Order do not effectively discourage warehousing.

7. Use of PINs

a. Background

60. In the NPRM, the Commission noted that Personal Identification Number (PIN) technology permits more intensive use of toll free numbers because the number of customers able to use a single toll free number increases exponentially with the number of digits in the PIN.²²⁵ The Commission, however, observed that PINs require toll-free callers to dial additional numbers and that numbers using PINs are not portable. The Commission

²²² See, e.g., Ameritech Comments at 6-7; Qwest Comments at 3-4; see also Qwest Reply Comments at 3.

²²³ Avis Comments at 2-5; see also Enterprise Comments at 5; Bass Tickets Comments at 2.

²²⁴ See supra para. 25.

²²⁵ NPRM at 13698. The number of customers potentially able to use a single toll free number when each customer is assigned a PIN is approximately equal to 10^N , where N is equal to the number of digits in the PIN. For example, a PIN with 6 digits could offer as many as one million customers access to inbound toll service from a single toll free number. We note that such intensive use would, in most cases, not be feasible.

concluded that a PIN "requirement" was not justified,²²⁶ but sought comment on how to encourage the use of PINs for services, such as personal toll free services or paging services, which are more likely to use the toll free numbers assigned to them with PINs.

b. Comments

61. Many commenters recognize PINs' value in slowing toll free number consumption, but argue that the Commission should not mandate PIN usage.²²⁷ LCI and CWI discuss the limitations of PIN technology, arguing that it is not compatible with services like call forwarding and fax-to-fax communications because such services do not allow the entry of additional digits.²²⁸ Other commenters note that number portability is not possible with PIN usage²²⁹ and that the requirement of dialing additional digits lowers the value of toll free numbers using PINs.²³⁰ Some toll free service subscribers state that the likelihood of misdialed calls is directly related to the number of digits dialed and that, when a toll free number handles many calls, the use of PINs is unworkable.²³¹ PCIA states that a policy encouraging the use of PINs unreasonably presumes that lower volume uses of toll free service have an inherently lesser value.²³² U S West does not support any artificial encouragement of PIN usage, but, rather, favors letting the market drive the appropriate behavior.²³³

²²⁶ Id.

²²⁷ See, e.g., Sprint Reply Comments at 13. See also MCI Comments at 6-7 and AT&T Comments at 11-2. As carriers that offer PINs for personal toll free service, MCI and AT&T argue that carriers should determine when PIN usage is appropriate, and support a policy of encouraging rather than mandating PIN usage. See also SNET Comments at 9 (the Commission should reward use of PINs by eliminating requirements that may be attached to numbers that do not utilize PINs).

²²⁸ CWI Comments at 3; LCI Comments at 6-7.

²²⁹ See Qwest Comments at 4-5; OPASTCO Comments at 10-11. See also SNET Comments at 9 (the benefits of improved toll free number utilization outweigh the potential number portability limitations).

²³⁰ See NEXTLINK Comments at 3.

²³¹ Avis Comments at 9-10; Service Merchandise Comments at 4.

²³² PCIA Comments at 3, 8-10; see also PageNet Comments at 11-12.

²³³ U S West Comments at 9-11.

62. Vanity International favors required shared-use on all 800 numbers for personal voice mail, homes, cellular phones, and pagers.²³⁴ The 800 Users Coalition supports a PIN technology requirement for services characterized by companies that obtain large pools of numbers which are used for low calling volume services.²³⁵

c. Discussion

63. Based on the record before us, we conclude that we will not require the use of PINs. We find that incentives already exist for using PIN technology. For example, a service provider using a four-digit PIN would achieve fifty percent coverage or 5000 customers per toll free number and would pay only one 70 cent service charge a month for SMS database fees. If this service provider assigned an individual toll free number to each of its 5000 customers it would pay \$3,500 a month in SMS database fees. Thus, by using only one 800 number and a four-digit PIN, the service provider saves \$3,499.30 a month. Also, requiring PIN usage would thwart the objective of increasing the portability of toll free numbers. Consequently, we conclude that the benefits of requiring PIN usage noted by some commenters are outweighed by the disadvantages of such a requirement.

8. Partitioning

a. Background

64. Partitioning is defined as assigning specific toll free SACs to subscribers of particular types of services dependent upon access to toll free dialing numbers (e.g., 800 for business entities, 888 for personal and paging subscribers, 877 for data and fax subscribers). In the NPRM, we sought comment on whether we should "partition" toll free service, leaving business entities and the majority of vanity number holders in the 800 SAC, while assigning subsequent toll free codes, like 888, to personal and paging subscribers and subscribers of other services that may develop.²³⁶ We noted that any partitioning plan must be consistent with the Communications Act and may not be unreasonably discriminatory toward any

²³⁴ Vanity International Comments at 4.

²³⁵ 800 Users Coalition Comments at 7-8; see also TRA Comments at 8-9. See also NYCHA Reply comments at 5 (require PINs for users with high volume of numbers assigned to them).

²³⁶ NPRM at 13704.

particular class of carrier.²³⁷

b. Comments

65. Several commenters support a "SAC by service" approach, whereby 800 numbers would be reserved for business applications and new toll free codes would be reserved for personal and paging services, as well as data and fax functions.²³⁸ The 800 Users Coalition proposes that existing "non-conforming assignments" (i.e., non-business applications) in 800 would be grandfathered, but would eventually migrate to the new SACs by attrition. The 800 Users Coalition states that such an approach would eliminate caller confusion and prevent brokering and other non-competitive uses of equivalent toll free numbers. The 800 Users Coalition also believes partitioning would: further the goals of the NANP to facilitate entry into the communications marketplace; facilitate easy access for consumers to the public switched network; and not give an undue advantage to any particular industry segment.²³⁹ Other commenters give qualified support to partitioning of toll free services. TLDP advocates economic incentives to encourage partitioning, such as requiring 800 service providers to increase their monthly SMS fee from 70 cents to \$2 or \$3 and exempting new toll free codes from such a charge.²⁴⁰

66. Numerous other commenters oppose partitioning toll free service, arguing that it could require a massive transfer of subscribers from 800 to 888,²⁴¹ and that it would be unreasonably discriminatory to force parties to change their numbers.²⁴² Bell Atlantic asserts that partitioning would violate the Commission's ruling on geographic area codes in the

²³⁷ Id. (citing Ameritech Order, 10 FCC Rcd 4596, for the premise that Ameritech's overlay plan to provide area code relief by restricting cellular and paging carriers to a particular area code was found to be unreasonably discriminatory by the Commission).

²³⁸ See 800 Users Coalition Comments at 8-13; Telco Planning Comments at 4; CMA Comments at 1-2; ARINC Comments at 2-4.

²³⁹ 800 Users Coalition Comments at 8-13.

²⁴⁰ TLDP Comments at 3-4.

²⁴¹ See NYNEX Comments at 9; Bell Atlantic Comments at 9; Scherers Comments at 17.

²⁴² See PCIA Comments at 12-13; Pacific Comments at 14; Bell Atlantic Comments at 9; UniTel Comments at 4.

Ameritech Order.²⁴³ AirTouch contends that the Commission underestimates the importance of 800 numbers to paging users and states that, if forced to transfer to 888, current 800 paging subscribers would suffer great disruptions of service. PCIA asserts that partitioning is unreasonable because there is no technical reason to require paging subscribers to accept toll free services under different terms and conditions than other toll free service subscribers. PCIA also contends that partitioning would substantially limit toll free number portability.²⁴⁴

c. Discussion

67. As some commenters note, there would be some advantage to partitioning. For example, a "SAC by service" approach could eliminate some caller confusion because SACs would be associated with particular types of services.²⁴⁵ The approach also could lessen incentives for number brokering,²⁴⁶ and could minimize the right of first refusal issue.²⁴⁷ While these arguments have some merit, we conclude that partitioning would not serve the public interest for several reasons. First, we find that partitioning would be unreasonably discriminatory because 800 numbers would, at least initially, enjoy greater recognition than would numbers in new toll free SACs. We disagree, therefore, with the 800 Users Coalition assertion that partitioning would not unduly benefit any particular market segment. "Non-conforming" entities (e.g., non-business applications such as paging and fax services) permitted to grandfather their numbers in 800 would have an advantage over competitors that would have to use a new SAC. Second, partitioning would require multiple 8XX codes to be opened immediately, which is not possible because the necessary software is still being developed. Third, it would be inefficient and costly to assign SACs by service when it is unclear that there would be sufficient service demand to consume most, if not all, of the numbers in a particular code. It is also unclear who would pay for development of multiple SACs if there were little demand for numbers within a particular code and, therefore, insufficient revenue to justify opening a new code. Fourth, some codes currently reserved for toll free service may be used for another purpose if the relative demands for INPAs change, which could not occur if toll free service was partitioned by SAC.

²⁴³ Bell Atlantic Comments at 9 (citing Ameritech Order, 10 FCC Rcd 4596 (1995)). See also PageNet Reply Comments at 11.

²⁴⁴ PCIA Comments at 12-13.

²⁴⁵ 800 Users Coalition Comments at 9-13.

²⁴⁶ Id.

²⁴⁷ Telco Planning Comments at 4.

B. MISDIALED CALLS**1. Background**

68. In the NPRM, we recognized that many toll free numbers, such as those used by telemarketing firms, receive a high volume of calls each day.²⁴⁸ We also acknowledged that, soon after the introduction of a new toll free code, there is a strong likelihood that a subscriber with a seven-digit number in one toll free code corresponding to a high volume seven-digit number in another toll free code might receive many misdialed calls.²⁴⁹ We sought comment on whether there should be some protection for the new toll free subscriber that obtains a number corresponding to a high volume-number in another code. We sought comment on how such a number should be identified in the SMS database.²⁵⁰ The NPRM also sought comment on requiring carriers to provide a transitional gateway intercept during the transition to 888. Under such a system, a consumer calling, for example, either "1-800-THECARD" or "1-888-THECARD" would first reach an intercept message that would help the consumer clarify which entity he wanted to reach before the call was completed.²⁵¹

2. Comments

69. BellSouth contends that no special measures should be developed for high-volume numbers because misdialed numbers are not unique to toll free calls, and maintains that these matters are best addressed on a case-by-case basis.²⁵² MCI asserts that it would be difficult to determine in advance which NXXs would be in high demand.²⁵³ Sprint maintains that multiple standards will complicate the reservation process.²⁵⁴ Many commenters note that providing protection for a toll free subscriber that obtains a new number corresponding to a

²⁴⁸ NPRM at 13704.

²⁴⁹ Id.

²⁵⁰ Id.

²⁵¹ NPRM at 13698-99.

²⁵² BellSouth Comments at 20; see also Unitel Comments at 4; MCI Comments at 18; Pacific Comments at 15.

²⁵³ MCI Comments at 12; see also AT&T Comments at 14 (stating there is no practical way to identify high demand NXXs).

²⁵⁴ Sprint Comments at 9-10.

high volume number in another code would necessitate modifications in the SMS database to identify these high volume numbers.²⁵⁵ Pacific maintains that toll free subscribers' traffic patterns are proprietary to RespOrgs and have great competitive value, and that an unscrupulous RespOrg could use the information to identify target markets.²⁵⁶ Other commenters suggest that, since the scope of misdialed toll free numbers is unknown, a separate forum such as the Industry Numbering Committee²⁵⁷ or the SNAC²⁵⁸ should study the problem further.

70. Several commenters support special treatment for 888 numbers corresponding to high volume 800 numbers. GSA offers two proposals to ameliorate the problem of misdialed numbers: (1) require that the 888 equivalent of high volume 800 numbers not be assigned until the public is accustomed to multiple toll free codes; and (2) prevent new high-volume users from being assigned 888 numbers so that the 800 number equivalent does not receive misdialed calls.²⁵⁹ Ameritech contends that the Commission should direct the industry, through the SNAC, to identify NXXs that would be subject to special treatment, and proposes a rule that numbers in those NXXs cannot be reserved without a specific subscriber request and cannot be reserved through computer-generated reservation programs.²⁶⁰ MFS supports requiring placement of certain high-demand 888 numbers in a special availability pool, which would be released for general availability on a completely random basis.²⁶¹ Both Telco Planning and AirTouch offer solutions to the misdialing problem.²⁶² AirTouch suggests a

²⁵⁵ See, e.g., Pacific Comments at 15; U S West Comments at 25; MCI Comments at 18; Bell Atlantic Comments at 10; Ameritech Comments at 34.

²⁵⁶ Pacific Comments at 15; see also Ameritech Comments at 34.

²⁵⁷ PageNet Comments at 15. See also LCI Comments at 9.

²⁵⁸ U S West Comments at 26.

²⁵⁹ GSA Comments at 4. See also U S West Reply Comments at 5-6; BellSouth Comments at 15-16; Coalition Comments at 20.

²⁶⁰ Ameritech Comments at 16-17.

²⁶¹ MFS Comments at 8; see also Telco Planning Comments at 3 (supporting a two-tier reservation process: one tier for high volume and vanity numbers and another tier for "regular" toll free numbers).

²⁶² AirTouch Comments at 19; Telco Planning Comments at 6.

requirement that each RespOrg report to the Commission "its top 10% usage numbers"²⁶³ and delay the assignment of these numbers for six months so that the public will become familiar with the new SAC.²⁶⁴ Telco Planning proposes establishment of two intervals for disconnected numbers: (1) one year for high-volume numbers; and (2) 90 days for numbers that would naturally result in a low volume of misdialled numbers (e.g., certain personal toll free numbers).²⁶⁵ According to Telco Planning, this measure would permit the low volume numbers to be assigned earlier, and reassigning the low volume numbers before the high-volume numbers would "naturally result in very low misdials if reactivated [sooner]."²⁶⁶

71. Most commenters addressing the proposed transitional gateway intercept oppose such a requirement.²⁶⁷ Reasons cited in opposition include cost,²⁶⁸ annoyance to the toll free caller,²⁶⁹ caller confusion, and lack of the necessary technology.²⁷⁰ The 800 Users Coalition advocates a voluntary transitional gateway intercept.²⁷¹ DMA supports a transitional intercept, but not as a substitute for a permanent policy protecting 800 vanity number subscribers against similar 888 numbers that confuse consumers.²⁷²

3. Discussion

72. The record in this proceeding has persuaded us not to adopt any special

²⁶³ AirTouch, however, fails to define the category of "top 10% usage numbers."

²⁶⁴ AirTouch Comments at 19.

²⁶⁵ Telco Planning Comments at 2.

²⁶⁶ Id.

²⁶⁷ See, e.g., TRA Comments at 20; Ameritech Comments at 32-33; Pacific Comments at 13; British Airways Reply Comments at 6; Bass Pro Comments at 7.

²⁶⁸ See, e.g., MCI Comments at 16; UniTel Comments at 4; ACRA Comments at 8-9.

²⁶⁹ See Pacific Comments at 13; Ameritech Comments at 32-33; Bell Atlantic Comments at 9.

²⁷⁰ See, e.g., 800 Users Coalition Comments at 23-24; Bass Pro Comments at 7; Weather Channel Comments at 7-8; Pacific Comments at 13; TRA Comments at 20.

²⁷¹ 800 Users Coalition Comments at 23-24. See also NYCHA Reply Comments at 12.

²⁷² DMA Comments at 14 n.5.

measures to protect new 888 number holders who obtain a number corresponding to a high-volume number in the 800 code. We conclude that public education and awareness campaigns will address consumer confusion that could lead to misdialed 800 and 888 toll free calls. Moreover, many equivalent high-volume numbers in 888 have been marked "unavailable" as part of the vanity number set-aside program to "minimize consumer confusion during the initial transition to the 888 service code."²⁷³ We anticipate that these measures will minimize the costs of misdialed calls received by some subscribers. In addition, many personal 888 numbers assigned a PIN cannot receive misdialed calls intended for the 800 subscribers because these personal toll free numbers will be protected by the use of a PIN.

73. We find that the solution offered by AirTouch to require RespOrgs to report their top 10% usage numbers and delay the assignment of those numbers when a new SAC is introduced and the solution offered by Telco Planning to establish two intervals for disconnected numbers are creative responses to the problem. However, they are administratively burdensome and difficult to implement. We agree with Pacific that a competing RespOrg could use the information suggested by AirTouch (i.e., identifying the most-used numbers) to target subscribers. Also, Telco Planning's proposal hinges on the SMS database's ability to identify all high volume numbers, yet no commenter has suggested whether or how the SMS database would need to be modified to identify these numbers. We conclude that a better approach, as suggested by PageNet and U S West, is for the industry to determine whether to study the scope of the misdialed toll free number problem, and to inform the Commission of the results of any study.

74. We disagree with BellSouth's claim that no special measures are needed because misdialed calls are not unique to toll free numbers. In the case of toll free numbers, the subscriber receiving the misdialed calls must either bear the cost of those calls or track them so that it may receive credit from its toll free service provider. Since misdialed calls are inevitable, we expect carriers to resolve billing disputes related to misdialed toll free calls promptly.

75. **We conclude that it is not now practical to require transitional gateway intercepts. We are concerned that many networks lack the technology needed to support transitional gateway intercepts.²⁷⁴ We do not have an adequate cost analysis, and thus cannot conclude that the proposal is in the public interest. Further, transitional gateway intercepts**

²⁷³ See Bureau Order at 2498.

²⁷⁴ See, e.g., MCI Comments at 16; NYNEX Comments at 9.

might increase post-dial delay, call set-up times, and access times.²⁷⁵

D. PERMANENT CAP ON RESERVATIONS

1. Background

76. To deter warehousing, existing Industry Guidelines have established a cap on the quantity of numbers that a RespOrg may have in reserved status at any point. That cap is 15 percent of a RespOrg's working numbers or 1000 numbers, whichever is greater.²⁷⁶ We sought comment on whether a permanent cap on reserved numbers of three percent or some other number lower than 15 percent should be imposed to reduce warehousing.²⁷⁷

2. Comments

77. Commenters generally support maintaining a cap on the quantity of numbers that a RespOrg is allowed to reserve. Many support retention of the cap set forth in the Industry Guidelines.²⁷⁸ Other commenters suggest caps between three and 15 percent.²⁷⁹ NYNEX asserts that the practice of basing the cap on a percentage of working numbers is flawed because as working numbers increase, the cap rises but the quantity of available toll free numbers falls. NYNEX suggests that the industry, with the Commission's help, should develop a formula that considers a RespOrg's market share and growth potential as well as the diminishing supply of toll free numbers.²⁸⁰ MFS does not support a cap as low as three percent because a cap this low could limit new RespOrgs' abilities to maintain steady growth rates.²⁸¹ CTA asserts that any cap imposed on the industry should not be usage based.²⁸²

²⁷⁵ See Ameritech Comments at 32-33.

²⁷⁶ Industry Guidelines at § 2.2.5.

²⁷⁷ NPRM at 13701.

²⁷⁸ See, e.g., CWI Comments at 12; Ameritech Comments at 27-8; SNAC Comments at 16.

²⁷⁹ AT&T Comments at 8 (eight percent); Scherers Comments at 14 (eight percent); LDDS Comments at 12 (10 percent); and Unitel Comments at 3 (three percent).

²⁸⁰ NYNEX Comments at 2-3.

²⁸¹ See MFS Comments at 9.

²⁸² CTA Reply Comments at 5-6.

NEXTLINK argues that the cap should be an absolute number imposed equally upon all RespOrgs because a cap based on a percentage of working numbers constrains small RespOrgs.²⁸³ USTA argues that a permanent cap on reserved numbers is contrary to the spirit of business in a competitive environment and that any restrictions should be limited to those imperative for the orderly conduct of business.²⁸⁴ Sprint argues that the Commission should codify the Industry Guidelines. For example, Sprint argues that rather than specifying that a RespOrg may reserve 1000 numbers, the rule should state that a RespOrg may reserve numbers in accordance with section 2.2.5 of the Industry Guidelines. Sprint argues that this would give the industry flexibility to revise the rules to meet changing circumstances.²⁸⁵

3. Discussion

78. We conclude that, without any market mechanism to discourage warehousing, a cap on a RespOrg's ability to reserve numbers is necessary. A cap assures all RespOrgs that other RespOrgs cannot stockpile large quantities of numbers through the reservation process and so discourages "runs-on-the-bank." The record indicates that it is necessary to reduce the current cap, which is based on the percentage of numbers in "working" status. The industry had set a cap of 15 percent when only numbers in the 800 code were available for toll free service. The addition of numbers in the 888 code essentially doubles the quantity of numbers available for toll free service and, eventually, working toll free numbers. We, therefore, adopt a cap of 7.5 percent of a RespOrg's working numbers to reflect this increased supply of toll free numbers. We agree that a cap based on a percentage of working numbers places RespOrgs without a large quantity of numbers in "working" status at a disadvantage. The Industry Guidelines acknowledge this disadvantage by setting a minimum cap of 1000 numbers. Several commenters assert that a minimum cap of 1000 numbers constrains small RespOrgs because small RespOrgs sometimes experience large spurts of growth. We conclude that doubling the minimum number of toll free numbers that RespOrgs may hold in "reserved" status (i.e. 2000 numbers) will allow newer RespOrgs to grow without being constrained by a percentage-based cap, but will not increase warehousing.²⁸⁶ We further

²⁸³ See NEXTLINK Comments at 5.

²⁸⁴ See USTA Comments at 9.

²⁸⁵ Sprint Comments at 10.

²⁸⁶ Increasing the minimum number to 2000 numbers will decrease the number of RespOrgs affected by the decrease in the percentage-based cap. For example, with a cap equal to 15 percent of working numbers or 1000 numbers, whichever is greater, a RespOrg with 13,333 working numbers could have up to 2000 numbers in reserved status. The reduction of the percentage cap from 15 to 7.5 reduces the quantity of numbers this